

## **STAFF REPORT**

### **INTRODUCTION**

This report describes the circumstances relating to the discharge of approximately 1450 gallons of waste earthen material and the potential discharge of waste earthen material from timber harvest plan (THP) 1-97-187 MEN to fish bearing streams that are tributary to the Eel River. The discharge and potential discharge are violations of prohibitions contained in the Water Quality Control Plan for the North Coast Region (Basin Plan). In addition, this report documents violations of the Forest Practice Rules (FPRs) that were documented by the California Department of Forestry and Fire Protection (CDF) in relation to THP 1-97-187 MEN.

The licensed timber operator (LTO), Mr. Roy Hauser, 165 Fir Canyon Road, Grants Pass, Oregon, was responsible for overseeing the implementation of erosion control measures for this THP. Mr. Hauser dba Tall Timber Forest Management (Mr. Hauser) failed to properly install adequate erosion control measures even after being notified by CDF that he was in violation of the FPRs. The failure to install erosion control measures combined with the onset of winter led to the discharge of waste earthen material to String and Tartar Creeks, fish bearing streams that are tributary to Tomki Creek, which is tributary to the Eel River. The California Department of Fish and Game (DFG) has stated that Chinook salmon and Steelhead trout have been documented in these streams. The Tomki Creek watershed is listed as impaired under Section 303(d) of the Federal Clean Water Act for sediment. Chinook and Coho salmon are listed as threatened under the Federal Endangered Species Act within the Eel River watershed.

### **VIOLATIONS**

#### Basin Plan Violations

The following section of the Water Quality Control Plan for the North Coast Region (Basin Plan) (Attachment 1), was violated:

“Section 4: IMPLEMENTATION PLANS; NONPOINT SOURCE MEASURES; ACTION PLAN FOR LOGGING, CONSTRUCTION, AND ASSOCIATED ACTIVITIES

#### **DISCHARGE PROHIBITIONS:**

The discharge of soil, silt, bark, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in

quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.”

### **DETAILS OF VIOLATIONS**

THP number 1-97-187 MEN received approval from CDF for a 91-acre shelterwood and seed tree removal, commercial thinning, and rehabilitation harvest on July 30, 1997. The properties are located in portions of SE ¼, Section 22 of Township 19 North, Range 13 West, Mount Diablo Base Meridian in Mendocino County. Jessie Wine, Leif and Kristi Yde, and Axel Yde are listed as the timberland owners on THP 1-97-187 MEN and own separate properties that together make up the THP area. Axel Yde and Jessie Wine have since passed away. Floyd Wine is the Trustee for the Wine estate while Leif Yde is the contact person for the Axel Yde property.

CDF personnel invited Regional Water Quality Control Board (RWQCB) staff to an active field inspection for THP 1-97-187 MEN. The inspection had been prompted by repeated FPRs violations. RWQCB personnel were present to assess alleged discharges of earthen material into watercourses resulting from these violations.

The FPRs generally specify the installation of erosion control measures and removal of temporary crossings to take place prior to the start of the winter period (October 15 of each year). As the LTO incorporated to THP 1-97-187 MEN by minor amendment (Attachment 2 – Minor Amendment #3), Mr. Hauser was responsible for overseeing the implementation of erosion control measures including the removal of temporary crossings.

CDF staff conducted two inspections during the month of October 1999. Based on site conditions witnessed during these inspections, CDF staff issued two Notice of Violations (NOV) of the FPRs (Attachment 3 – THP 1-97-187 MEN NOVs). These NOVs were transmitted to Mr. Hauser and detailed the FPRs violations as well as the necessary actions to mitigate the violations. The FPRs violations include failure to install waterbreaks, utilizing a landing within the watercourse and lake protection zone (WLPZ) of String Creek, utilizing native fill for a class I watercourse crossing rather than the required clean, cobble material, and failure to install a 24-inch diameter culvert at two class III crossings. The NOVs gave the LTO until November 5, 1999, to make the necessary improvements. Mr. Hauser did not respond to the NOVs and did not make the necessary improvements.

RWQCB staff inspected the THP area, String Creek and Tartar Creek on November 17 and 23, 1999. RWQCB staff determined that earthen material was discharged from several locations within the THP area. RWQCB staff further determined that features necessary to control the discharge of waste earthen material from the THP area were not installed.

Since late October, several rain events have occurred in the THP area. The rain, coupled with a lack of adequate erosion control measures, resulted in erosion and the discharge of waste earthen materials to String Creek and Tartar Creek.

RWQCB staff estimate that between October 15, 1999, and November 23, 1999, at least 1450 gallons of waste earthen material were discharged to String Creek and Tartar Creek resulting from timber harvest activities associated with THP 1-97-187 MEN (Attachment 4 – Measurements and Calculations Estimating Discharge Volume).

Tartar Creek flows into String Creek which flows into Tomki Creek, which eventually flows into the Eel River. Tartar Creek, String Creek, Tomki Creek and the Eel River support the following beneficial uses:

- cold freshwater habitat;
- commercial and sport fishing;
- warm freshwater habitat;
- migration of aquatic organisms;
- spawning reproduction and/or early development;
- domestic and municipal supply;
- agricultural supply industrial supply;
- groundwater recharge;
- navigation;
- water contact recreation;
- non contact recreation;
- aquaculture;
- estuarine habitat; and
- wildlife habitat.

The Tomki Creek watershed is listed as impaired under Section 303(d) of the Federal Clean Water Act, due to excessive amounts of sediment.

The deposition of earthen material from the THP area has caused a condition of pollution by filling pools, degrading spawning and rearing habitat for Steelhead trout, Chinook salmon, non-game fish species, and smothering benthic organisms which are part of the fish rearing food chain. The Water Quality Objectives for the North Coast Region state that waters shall not contain substances, including suspended or settleable materials, in concentrations that adversely affect beneficial uses. The discharge of earthen material into watercourses and the placement of earthen material from the THP area where it could pass into watercourses were in amounts deleterious to the beneficial uses of water.

## **POTENTIAL ENFORCEMENT ACTIONS**

### Administrative Civil Liability

Section 13350(a) of the Water Code states that any person whom:

- (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, intentionally or negligently discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, and creates a

condition of pollution or nuisance ... shall be liable civilly in accordance with subdivision (d), (e), or (f).

Mr. Hauser is liable under Section 13350(a)(2) because he violated the Water Quality Control Plan for the North Coast Region; Section 4: Implementation Plans; Action Plan for Timber Operations, Construction and Associated Activities; Prohibitions 1 and 2.

#### Potential Civil Liabilities

Section 13350(e)(1) provides that civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) for a violation of this section in an amount which shall not exceed ten dollars (\$10) for each gallon of waste discharged.

The discharge volume is estimated to be 1450 gallons. No cleanup of the discharge was made. Therefore, there were 1450 gallons discharged to String and Tartar Creeks that are be subject to the maximum \$10 per gallon civil liability.

#### Factors to be Considered

The Regional Water Board considers certain factors when determining the amount of civil liability, pursuant to Water Code Section 13327. These factors include:

Nature, Circumstance, Extent, and Gravity of the Violation:

Standard mitigation measures have been developed in order to reduce the potential for earthen material discharges to watercourses. Typically, erosion prevention and sediment control measures are implemented prior to October 15 of each year. These measures include, but are not limited to, waterbreaks on roads and skid trails, removal of temporary watercourse crossings not adequate to sustain high flows, protecting disturbed areas with materials designed to absorb the impact of rain fall and diffuse storm runoff, sediment basins/traps, installation of road drainage structures, and proper installation of access roads and skid trails. Failure to implement standard erosion control measures increases the potential for discharge of waste earthen material into waters of the state.

Mr. Hauser, the responsible LTO, did not install adequate erosion control measures on the properties associated with THP 1-97-187 MEN. As a result, approximately 1450 gallons of waste earthen material were discharged to String and Tartar Creeks following rainfall events between October 15 through November 23, 1999. Earthen materials contribute to the sedimentation of watercourses. Negative impacts to watercourses resulting from sedimentation include filling pools (usually ideal habitat for rearing young fish), degradation of spawning gravel beds due to fine sediment and smothering benthic organisms which are part of the fish rearing food chain. Therefore, the discharge of waste earthen materials created a condition of pollution or nuisance. Sedimentation may also adversely affect domestic, municipal, and agricultural water supplies as well as water contact recreation and non-contact recreation such as aesthetics.

During the inspections conducted by RWQCB staff, fine sediment was observed deposited on gravel beds on sections of both streams. These streams have been classified as fish bearing streams by DFG. Species documented in the streams include Chinook salmon, Steelhead trout and non-game species. The observed sediment discharges originated from properties within THP 1-97-187 MEN. It is clear that waste earthen material was discharged to String and Tartar Creeks due to the lack of appropriate erosion control measures being installed.

Whether the Discharge is Susceptible to Cleanup or Abatement:

The discharge has been abated by the implementation of a short-term erosion control plan completed by a new LTO hired by owners and representatives of the properties associated with THP 1-97-187 MEN. Completion of a long-term component of the erosion control plan should abate potential future discharges.

The Degree of Toxicity of the Discharge:

The sediment discharge adversely affects the aquatic habitat by filling pools and spawning gravels necessary for fish reproduction and survival.

Ability to Pay and Effect on Ability to Continue in Business:

Staff has no information regarding Mr. Hauser's ability to pay or the effect on his ability to continue in business. Mr. Hauser or someone representing his interests should be prepared to address his ability to pay the maximum civil liability or any lesser amount.

Voluntary Cleanup Efforts Undertaken:

Mr. Hauser did not attempt any cleanup efforts. A new LTO has completed work on a short-term component of an erosion control plan. The short-term component is aimed at reducing delivery of earthen material into either String or Tartar Creeks during the ongoing winter period. A long-term component of the erosion control plan will be completed when weather conditions allow access to heavy equipment. These activities have been solely the undertaking of the owners and representatives of the properties associated to THP 1-97-187 MEN. Mr. Hauser had no involvement in any clean up efforts.

Prior History of Violations:

No additional violations associated with Mr. Hauser exist in the RWQCB records. However, NOV's for a different THP (1-96-540 MEN) exist in CDF records (Attachment 5 – THP 1-96-540 MEN NOV's). Violations of the FPRs were issued by CDF for improper installation of waterbreaks and failure to remove at least two watercourse crossings.

Degree of Culpability:

Mr. Hauser was incorporated into the THP as the LTO on June 22, 1998, through a minor amendment. Pursuant to the minor amendment, "The LTO will be responsible for the entire THP operation which includes, but is not limited to, road and landing reconstruction, construction and

maintenance in the THP area and on the appurtenant roads.” THP operations include the implementation of erosion control measures.

CDF conducted an inspection on October 8, 1999, which resulted in issuing Mr. Hauser a NOV dated October 20, 1999, for failure to install waterbreaks and utilizing a landing within the watercourse and lake protection zone (WLPZ) of String Creek. The October 20, 1999 NOV further indicated that the THP had not been winterized, the seasonal roads and tractor roads lacked drainage facilities, and detailed additional work that was necessary. The NOV gave the LTO until November 5, 1999, to make the necessary improvements. Mr. Hauser did not respond to this NOV and did not make the necessary improvements.

CDF conducted another inspection on October 22, 1999, which resulted in a second NOV being issued to Mr. Hauser on October 25, 1999. The October 25, 1999, NOV was for failure to install waterbreaks, utilizing native fill for a class I watercourse crossing rather than the required clean, cobble material, and failure to install a 24-inch diameter culvert at two class III crossings. The NOV gave the LTO until November 3, 1999, to make the necessary improvements. Mr. Hauser did not respond to the second NOV and did not make the necessary improvements.

Mr. Hauser was given ample notice that his responsibilities, as the LTO for THP 1-97-187 MEN, to install adequate erosion control measures were not being met. Mr. Hauser did not respond to the NOVs issued by CDF and did not install adequate erosion control measures. The failure to implement appropriate erosion control measures led to the discharge of waste earthen materials to String and Tartar Creeks creating a condition of nuisance or pollution to documented fish bearing streams.

#### Economic Savings:

According to an invoice, submitted to the landowners by the new LTO amended into THP 1-97-187 MEN, for work done as a short-term erosion control plan the hourly rate while operating heavy equipment is \$65.00 per hour and \$37.50 for regular labor. His total charge for implementing the short-term erosion control plan amounted to \$2,945.55. This figure is specifically related to activities which should have been done by Mr. Roy Hauser.

The short-term erosion control plan is a minor component of the work required for the properties associated with THP 1-97-187 HUM to be fully winterized. Additional work will be required when site conditions allow heavy equipment access to currently saturated roads and skid trails, thereby increasing the total cost significantly.

#### Other Matters as Justice May Require:

Staff is not aware of any other matters requiring consideration.

## **CONCLUSION**

Mr. Roy Hauser dba Tall Timber Forest Management failed to implement appropriate erosion control measures on the properties associated with THP 1-97-187 MEN. This failure led to the discharge of waste earthen material to String and Tartar Creeks, which created a condition of pollution or nuisance.

### **PRELIMINARY STAFF RECOMMENDATION:**

This staff report and all other evidence and testimony provided prior to and during the noticed Public Hearing will form the record on which Regional Water Board decisions will be based. Regional Water Board staff has considered the circumstances surrounding the discharge of waste earthen materials to String and Tartar Creeks and recommends that the Regional Water Board consider the adoption of an administrative civil liability order in the amount of \$10,000.

(3staff report)